



Appeal Decision

Site visit made on 19 December 2023

by K Savage BA(Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 January 2024

Appeal Ref: APP/X2410/W/23/3318405

Land South East Of Mill House, Mill Lane, Syston, Leicester LE7 1NS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr James Vernon (JJ Scaffolding Ltd) against the decision of Charnwood Borough Council.
 - The application Ref P/21/1925/2, dated 27 August 2021, was refused by notice dated 2 February 2023.
 - The development proposed is change of use of agricultural land to a mixed use for storage or distribution and general industrial purposes (Use Classes B2 and B8), retention of hard-surfacing works and metal fencing.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal is made on a partly retrospective basis, with hard surfacing and perimeter fencing having already been installed. The change of use has not commenced and I have considered this as a proposed element of the scheme. During the application, a proposed open sided storage building was removed from the plans and the site area was extended to include the adjacent field to the south-east of the site as an area for ecological mitigation. Therefore, I have used the description from the decision notice which reflects the extent of development upon which the Council ultimately made its decision.
3. A new version of the National Planning Policy Framework (the Framework) was published on 19 December 2023. The parts of the Framework most relevant to the appeal have not substantively changed from the previous iteration. Consequently, this update does not fundamentally alter the main parties' cases, and it is not necessary to seek further comments. References hereafter in the decision to the Framework are to the December 2023 version.

Main Issues

4. The main issue in this case is whether the proposal represents a suitable location for the development, having regard to local and national policies relating to i) flood risk; ii) the character and appearance of the area and iii) development in the countryside.

Reasons

Site Context

5. The appeal site is located towards the end of a rural lane that terminates at a collection of buildings and open storage areas in use by a range of industrial

businesses, many related to car sales and repairs. The immediate area is surrounded on the north-western side by the River Wreake and to the east by a raised railway line. Aside from these features, the cluster of industrial uses are surrounded by open fields forming part of the wider countryside around Syston.

6. The site includes Mill House which has recently been renovated. In addition, since purchasing the site in 2021, the appellant has undertaken clearance of vegetation, laid aggregate to create a hardstanding and erected steel fencing to the perimeter of the site, which extends to some 2,158 square metres. A bund has been created to the north-eastern side of the site next to a stream tributary of the River Wreake.
7. The site is proposed to be used by the appellant for his scaffolding business to load and unload scaffolding lorries with poles, boards and other equipment. The appellant states that storage of materials and vehicles on site would be occasional at most.

Flood Risk

8. The development plan for the area comprises the Charnwood Local Plan Core Strategy (2011-2028) (November 2015) (the CS) and saved policies of the Borough of Charnwood Local Plan 1991-2006 (January 2004) (the BCLP). I have also noted reference to draft policies of the emerging Charnwood Local Plan 2021-2037 (the eCLP), which are afforded limited to moderate weight by the Council depending on the level of unresolved objection.
9. Policy CS16 of the CS seeks to ensure that new development is not at risk of flooding and that it does not cause flood risk elsewhere. The policy is consistent with the Framework, which indicates that a sequential approach should be used in areas known to be at risk from any form of flooding. The Planning Practice Guidance (PPG) states that for the purposes of applying the Framework the 'areas at risk of flooding' are principally land within Flood Zones (FZ) 2 and 3. The aim of the sequential test is to steer new development to areas with the lowest probability of flooding, these being within FZ1.
10. The Framework is clear that the sequential test should consider flooding from any source. Only where there are no reasonably available sites in FZ1 should reasonably available sites in FZ2 be considered. If the sequential test demonstrates that it is not possible for development to be located in zones with a lower risk of flooding, then the exception test may have to be applied.
11. The Council's Level 1 Strategic Flood Risk Assessment (December 2018) (SFRA) identifies the appeal site as lying within Flood Zone (FZ) 3b Functional Floodplain. This is defined in the SFRA as 'land where water has to flow or be stored in times of flood' and it is stated that only water compatible and essential infrastructure¹ will be permitted in this zone.' The Environment Agency (EA) has re-affirmed the status of the site as being within FZ3b as detailed hydraulic modelling has shown the site is impacted by the 1 in 5 year event (20% Annual Exceedance Probability (AEP)), which far exceeds the AEP of 3.3% used to define the Functional Floodplain under the Planning Practice Guidance (PPG).
12. The appellant has undertaken a sequential test which considered employment sites identified in the Charnwood Strategic Housing and Economic Land

¹ Which has passed the Exception Test

Availability Assessment 2020 and sites marketed on property websites. The identified sites are discounted for reasons of unavailability, size, unsuitability for the proposed use or having similar levels of flood risk. The Council has not specifically challenged the sequential test; however, I note that the test includes sites which are within Charnwood district but some distance from the appeal site, such as at Loughborough or Shepshed, but conversely it does not take in closer locations such as the northern reaches of Leicester. Indeed, given the appellant's indication that his business was formerly operating within Leicester, it is unclear why the sequential test has not considered other potential sites in the city. Given the extent of this nearby urban area, and the likely presence of several industrial areas whose suitability has not been considered, I am not satisfied that the sequential test has been passed.

13. However, this aside, the PPG sets out that within FZ3b only 'water-compatible' development is permitted. This is defined in the Framework and relates to development which must functionally be located close to water. It does not include general industrial or commercial uses. The appellant's flood risk assessment (FRA) accepts the majority of the site is within FZ3b, but argues that the laying of permeable hardstanding should be regarded as 'water compatible.' This is despite the appellant's sequential test acknowledging that the proposed use of the site, for storage and parking of lorries overnight, falls within the 'less vulnerable' category. The Council, supported by the EA, argues that the development should be considered as 'less vulnerable,' being similar to a car park which is so defined under the Framework.
14. Having regard to the Framework definition of 'water compatible' development, I find the proposed use does not fall within this category and I agree with the Council and EA that it should be regarded as being within the 'less vulnerable' category. The PPG at Table 2 of the Flood Risk and Coastal Change chapter clearly states that less vulnerable development should not be permitted in FZ3b. Therefore, even if I were to accept the appellant's position that no other sequentially preferable sites exist, the proposal would still represent development which is inappropriate in principle within the functional floodplain.
15. The risks of permitting such development within FZ3b are evident. The AEP of the site is exceptionally high at 20%, and therefore it is at significant risk of frequent flooding. Whilst the appellant points to the hardstanding being permeable and to the erection of a bund alongside the stream, the EA points out that bunding has the effect of reducing the area over which water is able to naturally flow and be stored in times of flood, thereby reducing floodplain capacity. A consequence of this is an increased risk of flooding frequency, depths and hazard rating to other areas, for flood flows to divert elsewhere and for the extent of flooding to increase. The EA also points to the risk of the fencing, vehicles and materials that would be stored on site being washed away and causing blockages downstream, damaging flood defences and adding to flood risk elsewhere. Such risks are palpable and the frequency with which flooding could occur on site only adds to this risk.
16. I have had regard to potential conditions advanced by the appellant within the sequential test; however, these would not wholly mitigate the risks identified by the EA, particularly the reduction in floodplain caused by the bunding.
17. Therefore, due to the nature of the use and works on site, I conclude that the proposal would represent an unacceptable form of development within FZ3b

which would increase the risk of flooding elsewhere. It has also not been satisfactorily demonstrated that the proposal could not be suitably accommodated in an area at lower risk of flooding. The proposal would therefore conflict with Policy 16 of the CS, the similar approach of draft Policy CC1 of the eCLP, the approach of the Framework in respect of flood risk and the associated guidance of the PPG. There would also be subsequent conflict with Policy CS2 of the CS which requires developments to function well and add to the quality of an area over the lifetime of the development and to reduce their impacts and be resilient to the effects of climate change in accordance with Policy CS16.

Character and Appearance

18. Aerial photography from the Council shows that, as recently as 2020, the site was undeveloped grassland forming part of a larger field extending to the south-east. The 2021 image shows hardstanding was introduced, with the bunding and perimeter fencing added at the same time or some point thereafter. On site, I saw that a line of coniferous trees has been planted to the south-eastern boundary.
19. The evidence before me shows that the site, despite being adjacent to an established industrial area, clearly formed a contiguous part of the undeveloped countryside. The introduction of the hardstanding and fencing has effectively extended the industrial estate further along Mill Lane on one side.
20. The open nature of the site and tall security railings lends it an unmistakably industrial appearance. The introduction of the tree line to the south-eastern boundary does provide a screen that will improve over time as the trees mature, which would limit the visual impact of the site for walkers using the public footpath which crosses the adjacent field. However, the boundary would have a somewhat artificial appearance due to the straight tree line and the coniferous species used, which would be indicators of development behind.
21. The open site with parked vehicles and materials would also be visible from Mill Lane itself. I accept that the existing industrial development is a visible feature at the terminus of the view along the lane and a significant part of the immediate character, and that the use of the site, being comparable to the neighbouring industrial uses, would not stand out as an isolated form of development. However, these uses, whilst longstanding, offer little by way of visual amenity and represent an isolated cluster of development which is not intrinsically linked with the rural economy and is inconsistent with the character of the wider rural surroundings. The expansion of the industrial area in the manner proposed would add to its scale and prominence and exacerbate this inconsistency.
22. In reaching a view, I afford limited weight to the arguments that the site had no rural function and detracted from the visual amenity of the area. Whilst it may have included some unkempt areas, it was overwhelmingly natural in appearance and provided a soft edge between the industrial uses and the open countryside, whilst also fulfilling a role as part of the functional floodplain. The proposal would diminish its contributions in both these respects.
23. I acknowledge that the enclosed nature of the surroundings means the site would not have a significant adverse effect on the wider landscape in this area. However, for the reasons set out, I conclude that the proposal would cause

localised harm to the character and appearance of the area. This would conflict with Policies CS2 and CS11 of the CS, and relevant parts of Saved Policies CT/1 and CT/2, which together require new development to respect and enhance the character of the area; protect landscape character; reinforce a sense of place and local distinctiveness and not have significant adverse environmental effects. There would also be conflict with the similar aims of draft Policies DS5 and EV1 of the eCLP.

Development in the Countryside

24. The site lies within the countryside for the purposes of the development plan. Policy CS1 of the CS seeks to direct development to the most sustainable locations through a settlement hierarchy. The appeal site is not located in any of the identified settlements under Policy CS1 or under the proposed spatial strategy of draft Policy DS1 of the eCLP.
25. Policy CS10 relates to rural economic development and supports the sustainable growth and expansion of businesses in rural areas. The proposal in this case does not relate to a new business, but would involve the relocation of the appellant's business from a site within the administrative area of Leicester City Council. As such, the proposal would not enjoy support under Policy CS10, which otherwise directs development to allocated employment land in service centres.
26. Moreover, the proposal would not be a form of development supported in the countryside under Saved Policy CT/1. Nor would the proposal accord with draft Policy E3 of the eCLP as it would not represent the expansion of an existing business in a rural area through either conversion of existing buildings or well-designed new buildings and, as set out above, it would be detrimental to the character and appearance of the countryside.
27. I recognise that the Framework supports the sustainable growth and expansion of all types of business in rural areas, and that that sites to meet local business and community needs in rural areas may have to be found adjacent to or beyond existing settlements, and in locations that are not well served by public transport. The appellant has pointed out that the use, being one which generates noise and regular vehicular movements, is better located away from residential areas, is not suitable for office parks and does not need to use buildings as may be found in established industrial estates.
28. I acknowledge that the use may not be conducive to a wholly residential area, but neither is it a use which must locate in the countryside for operational reasons, as it is not related to agriculture or another land-based enterprise. I have already found the alternative sites identified in the sequential test to be insufficient to demonstrate this is the only suitable site, and beyond the fact that the appellant owns the land and seeks a permanent, freehold site for his business, no further evidence has been adduced to show that this is the only possible location and that there are no other sites located in more accessible locations within or adjacent to an existing settlement which do not involve incursion into the open countryside, as required by saved Policy CT/1.
29. Reference is made to the lawful use of the land being unclear, the appellant stating that some hardstanding existed when the site was purchased in 2021. However, I have no clear evidence of the land being put to a specific use and the aerial photography from the Council indicates that any hardstanding was

over a limited area adjacent to Mill House, and in no way comparable to the extent of hardstanding since laid. In any event, the description of development refers to the change of use of agricultural land and, absent evidence to the contrary, I have considered the appeal on that basis.

30. I note the argued benefits of the proposal in terms of securing employment for 22 people and from the 'clustering' of similar business allowing sharing of resources and staff. However, given the indications that the business is well-established, and indeed growing, these jobs would not all be newly created, nor is the evidence persuasive that these jobs would be in jeopardy should permission be refused. There is also no tangible evidence of the extent of benefits arising from the described 'clustering effect' with another scaffolding business. Therefore, I afford only limited weight to these argued benefits.
31. Overall, due to the location of the site within the open countryside and the identified harm from increased flood risk and adverse effect on the character and appearance of the area, the proposal would conflict with the spatial strategy as set out across Policies CS1, CS10 and Saved Policies CT/1, CT/2 and ST/2 in terms of locating development in the countryside. There would also be conflict with the similar aims of draft Policies DS1, C1 and E3 of the eCLP.

Other Matters

32. The site area was extended during the course of the application to take in the adjacent field to the south-east. The area is described as predominantly semi-improved grassland, with encroaching areas of tall ruderal vegetation, dense and scattered scrub. The area now covered by hardstanding was also assessed as such. The appellant proposes to mitigate the loss of this area of grassland through biodiversity enhancements to the remainder of the site, namely a programme of native species rich scrub planting.
33. However, the appellant's Ecology Technical Note² appears to show a net loss in terms of habitat impacts. The appellant concedes that the proposal would not result in a net gain in biodiversity, but that the approach has been agreed with the Council's biodiversity consultee as being a realistic option for the land in question. I have no further evidence to clarify this matter, but even if I were to accept the appellant's position, the outcome is no better than neutral in terms of biodiversity, with no net gain weighing in favour of the proposal.
34. The Council did not refuse the application in respect of the effect on highway safety. Having considered the evidence before me, I have no reasons to conclude differently. However, this is similarly a neutral matter in the overall planning balance.

Planning Balance and Conclusion

35. The proposal fails to satisfy national flood risk policy in terms of the sequential location of development. It would also cause harm to the character and appearance of the area and would not represent a form of development supported in the countryside. This would result in conflict with the development plan as a whole and with the objectives of sustainable development set out in the Framework. I give significant weight to the development plan conflict given the relevant policies are generally consistent with the Framework.

² Appendix B: BIA Summary

36. The conflict with the Framework in respect of flood risk means that, per Paragraph 11(d)(i) and Footnote 7, the presumption in favour of sustainable development, i.e. the 'tilted balance', is not engaged despite the policies of the development plan being more than five years' old, but rather points to development being refused.
37. The proposal would give rise to benefits to the local economy through retaining local employment by the business, though as it has not been demonstrated that this is the only feasible location for the business to locate, this limits the weight I afford to this benefit, as does the fact that in delivering this benefit the development would simultaneously introduce demonstrable flood risk. Other matters, for reasons set out, attract neutral or very limited weight.
38. In my judgement, the benefits of the scheme would not amount to material considerations which would outweigh the identified significant conflicts with the development plan and the Framework. Consequently, they would not justify a decision being made other than in accordance with the development plan, taken as a whole.
39. Therefore, I conclude that the appeal should be dismissed.

K. Savage

INSPECTOR